

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                  |   |                                   |
|----------------------------------|---|-----------------------------------|
| TIFFANY TOMASSI,                 | ) |                                   |
|                                  | ) |                                   |
| Plaintiff,                       | ) | 2:12-cv-01354                     |
|                                  | ) |                                   |
| v.                               | ) | Judge Mark R. Hornak              |
|                                  | ) | Magistrate Judge Maureen P. Kelly |
| CAROLYN W. COLVIN, Acting        | ) |                                   |
| Commissioner of Social Security, | ) | ECF Nos. 11 & 16                  |
|                                  | ) |                                   |
| Defendant.                       | ) |                                   |

**MEMORANDUM ORDER**

Plaintiff Tiffany Tomassi commenced this action by filing a Motion for Leave to Proceed *In Forma Pauperis* on September 19, 2012. That motion was granted and the Clerk of Court docketed the Complaint (ECF No. 3) on September 21, 2012. The case was referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF. No. 19), filed on August 21, 2013, recommended that Defendant's Motion for Summary Judgment (ECF. No. 16) be denied, and that Plaintiff's Motion for Summary Judgment (ECF. No. 11) be granted to the extent remand for reconsideration was sought and denied to the extent reversal and an immediate award of benefits was sought, and that the decision of the Commissioner be vacated and the case remanded for further consideration. Service was made on all counsel of record. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections. The Defendant filed timely Objections to the Report and Recommendation (ECF No. 20) on September 9, 2013.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and Objections thereto, the following order is entered:

AND NOW, this 20<sup>th</sup> day of September, 2013,

**IT IS HEREBY ORDERED** that Plaintiff Tiffany Tomassi's Motion for Summary Judgment (ECF. No. 11) is granted to the extent it seeks remand for reconsideration and is otherwise denied, Defendant's Motion for Summary Judgment (ECF No. 16) is denied, the decision of the Commissioner is vacated and the matter is remanded for reconsideration consistent with this Order.

**IT IS FURTHER ORDERED** that the Report and Recommendation of Magistrate Judge Kelly (ECF No. 19), dated August 21, 2013, is adopted as the Opinion of the Court.<sup>1</sup>



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Mark R. Hornak  
United States District Judge

cc: All counsel of record

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<sup>1</sup> The Commissioner appears to construe the observation that the ALJ “need not” take testimony on remand, R&R at 26, as meaning that the ALJ “must not.” *Thomas v. Comm’r. of Soc. Sec.*, 625 F.3d 798, 800-01, n.2 (3d Cir. 2010) does not mean that, at all. Here, given the nature of the matters to be considered on remand, opening the record for additional testimony is a well-advised course in order to allow for “full development” of the record. We leave it to the Commissioner on remand to first consider whether her obligation to “fully develop” the record on remand can be accomplished only via submissions. *Id.* at 801, n.2.